



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Porter/Novelli

**File:** B-258831

**Date:** February 21, 1995

Philip J. Davis, Esq., and Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for the protester. Richard J. Webber, Esq., Arent Fox, for Prospect Associates, Ltd., an interested party. L. Benjamin Young, Jr., Esq., Department of Agriculture, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Cost realism analysis of the awardee's proposal was reasonable where agency considered the realism of the awardee's proposed direct labor costs, number of labor hours, indirect costs, and subcontractor costs and the protester has not pointed to any costs or hours that it contends are unrealistic.

2. Where the record sets forth a reasonable basis for the agency's determination that two proposals are of equal technical merit, the agency's determination is unobjectionable, notwithstanding a difference in the point scores assigned to the proposals.

### DECISION

Porter/Novelli protests the award of a contract to Prospect Associates, Ltd., under request for proposals (RFP) No. FNS-94-038ASW, issued by the Food and Consumer Service of the Department of Agriculture. Porter/Novelli raises a number of challenges to the conduct of the procurement, and in particular contends that the agency failed to conduct a reasonable cost realism analysis of the awardee's proposal.

We deny the protest.

The agency issued the RFP to obtain consulting services and program support for a nutrition education media and marketing campaign. The RFP stated that the agency would

award a cost-plus-fixed-fee, indefinite delivery, indefinite quantity contract.

In April 1994, several months prior to release of the RFP, the agency developed an estimate of the number of hours needed for performance and the total anticipated cost. According to that independent government cost estimate (IGCE), performance would require 6.82 staff-years of labor; the total cost to the government for performance of all tasks was estimated at approximately \$2,000,000. The agency personnel preparing the IGCE assumed that the work to be performed would consist of three tasks, with 11 components.

An announcement in the Commerce Business Daily (CBD) issued in June, prior to release of the RFP, stated that the RFP would cover a base year with 3 option years and that the agency anticipated that the base year effort would require approximately 7 staff-years of effort. As issued on July 29, however, the RFP did not include option periods. The RFP identified 15 tasks that would be performed under the contract and indicated the number of weeks after award that the tasks were to be completed; some of the tasks were expected to be completed only 104 weeks (that is, 2 years) after award. Apparently referring to these tasks, the RFP stated that the estimated period of performance would be 2 years. The agency did not revise the IGCE to reflect the RFP's adoption of a 15-task structure instead of the 3-task structure assumed in the development of the IGCE.

Amendment 1, issued on August 2, changed the period of performance from 2 years to "date of award through September 30, 1995" (that is, well under 2 years), but also indicated that task orders might be issued which required a period of performance as long as 2 years. Amendment 2, issued on August 16, included the following question from a potential offeror and the agency's response:

"Q. How many person-years of effort are envisioned for year 1?

"A. As identified in the CBD announcement, seven person-years of effort is estimated for year one. This estimate does not include the second 12 month period for tasks specified as having 24 month periods of performance. However, offerors should submit proposals based on their own assessment."

The amendment also stated that the 7-staff-year estimate included only labor, and that other direct costs, such as facilities, travel, production, and materials, were not included.

Section M of the RFP stated that "paramount consideration" would be given to technical proposals rather than to cost. It added that award would be made to the offeror whose proposal represented the combination of technical merit and cost most favorable to the government.

Four offerors submitted proposals by the August 29 deadline for receipt of proposals. The technical proposals were reviewed by a technical evaluation panel (TEP), which scored them on the basis of a 100-point scale. The TEP recommended that only Porter/Novelli's and Prospect's proposals be included in the competitive range, because their proposals received technical point scores much higher (84 and 74, respectively) than the remaining two proposals (each below 25 points). That recommendation was conveyed to the board of awards (BOA), which agreed. The contracting officer, who was the source selection authority, also agreed and made her competitive range determination accordingly.

In its initial offer, Porter/Novelli proposed a cost of approximately \$5,526,000, which included more than 62,500 hours of effort; Prospect's initial proposed cost was approximately \$2,509,000, covering approximately 28,000 hours.<sup>1</sup> The cost evaluators had concern about Porter/Novelli's high cost.

Oral discussions were conducted separately with Porter/Novelli and Prospect on September 19. During those discussions, the agency negotiators advised Porter/Novelli that the firm risked pricing itself out of the competition due to its high proposed costs and that it would need to "sharpen its pencils" in preparing its best and final offer (BAFO). Technical questions were also raised with the two firms.

The offerors responded in writing to the discussion questions by submitting revised technical and cost proposals. Based on review of those proposals, the agency evaluators revised the technical scores to 84.25 points for Porter/Novelli's proposal and 79 points for Prospect's. Porter/Novelli reduced its proposed cost by roughly \$1,500,000 (27 percent), to approximately \$4,058,000; it reduced the number of hours proposed to roughly 48,000 (a

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<sup>1</sup>There is some confusion in the record regarding the number of labor hours proposed, apparently due to uncertainty about the number of subcontractor hours. At issue, however, is a relatively small number of hours without consequence to our decision.

decrease of 23 percent). Prospect reduced its proposed cost by a much smaller amount (approximately \$300,000, or less than 12 percent) to \$2,216,385; it also slightly lowered the number of proposed hours.

After a further round of discussions, BAFOs were submitted on September 28. Porter/Novelli's BAFO cost remained approximately \$4,058,000; the number of hours proposed was also unchanged. Prospect's BAFO cost dropped somewhat, to approximately \$2,196,000.

The TEP found that there was "little discernible technical difference" between the two proposals, despite the different methods of performance and quantity of labor hours and materials proposed by the two firms. The TEP advised the BOA that the two proposals' ratings were "essentially equal." It further advised that Prospect's costs were in line with its proposed level of effort. Based on the approximately \$1,800,000 difference in proposed costs, the BOA recommended award to Prospect. The contracting officer concurred in that conclusion and awarded the contract to Prospect on September 29.

Porter/Novelli disputes the reasonableness of the agency's determination that the two proposals were technically equivalent. The protester also contends that the agency failed to conduct a reasonable cost realism analysis of Prospect's proposal. Finally, Porter/Novelli asserts that the discussions were legally inadequate because the agency failed to disclose that the agency considered the protester's proposed costs to be extremely high.

Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Payco An. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. The fact that a protester disagrees with the contracting activity's judgment does not establish that the evaluation was unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Porter/Novelli essentially does not challenge the technical evaluation; instead, it focuses its protest on the reasonableness of the agency's finding that the two proposals were technically equal, notwithstanding the point score advantage in Porter/Novelli's favor.<sup>2</sup> The

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<sup>2</sup>The protester does raise a limited challenge to the rating that its proposal received for its technical approach. Under that evaluation factor, which was the most heavily weighted technical criterion, Porter/Novelli's proposal  
(continued...)

protester's argument relies on an overstatement of the role of point scores in the source selection process. While point scores may be useful as guides in decision-making, they are not binding on source selection officials. Met-Pro Corp., B-250706.2, Mar. 24, 1993, 93-1 CPD ¶ 263. Here, the record explains the basis for the finding of technical equality: the agency compared the two proposals and determined that there was no discernible technical difference between them. For this reason, the protester's slight point score advantage did not reflect any significant technical advantage. In offering a reasoned basis for discounting the importance of a difference in point scores, the agency acted properly. Accordingly, the agency's determination that the two proposals were essentially equivalent in technical merit, notwithstanding the point scores, is unobjectionable. See Duke/Jones Hanford, Inc., B-249367.10, July 13, 1993, 93-2 CPD ¶ 26.

Once the two proposals were found technically equal, it was proper for the agency to make award based on cost, notwithstanding the RFP provision assigning technical criteria greater weight than cost. Id. Because Prospect's proposed cost was dramatically lower than Porter/Novelli's, the protester cannot plausibly dispute the reasonableness of the agency's source selection.

Porter/Novelli argues, however, that, on the one hand, Prospect's proposed cost was unrealistically low and, on the other hand, that Porter/Novelli would have reduced its proposed cost further if it had not been misled during

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<sup>2</sup>(...continued)

received a near-perfect score. Nonetheless, due to a number of specific concerns identified in the evaluation worksheets, several of the evaluators each deducted 1 point from Porter/Novelli's score in this area, thus lowering its rating from "excellent" to "very good." According to the protester, the agency improperly downgraded the proposal due to Porter/Novelli's failure to propose to perform a task, where that task was not, in fact, required by (or even mentioned in) the RFP. The agency affirms that it views the disputed task as encompassed by the RFP language. We need not resolve this dispute since (1) Porter/Novelli's nearly perfect score for its technical approach makes clear that this issue played a very minor role in the technical evaluation, and (2) to the extent that the proposal was slightly downgraded under the technical approach criterion, the evaluators raised other concerns, in addition to the failure to address the disputed task, so that the slight deduction of points was reasonable even without consideration of that task.

discussions. We conclude that neither of these arguments has merit.

In making an award determination for a cost reimbursement contract, a contracting agency must perform a cost realism analysis of competing proposals, since the government is required to pay the contractor its actual allowable cost. FAR §§ 15.605(d), 15.801, and 15.805. That analysis requires the exercise of informed judgment by the contracting agency, which is in the best position to assess the realism of cost and technical approaches. Clement Int'l Corp., B-255304.2, Apr. 5, 1994, 94-1 CPD ¶ 228. For that reason, and because the agency will have to bear the additional expenses and other adverse results of a defective cost analysis, our review is limited to a determination of whether the agency cost evaluation was reasonable and not arbitrary. Id.

An agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. SCI Sys., Inc., B-257985.2, Dec. 19, 1994, 94-2 CPD ¶ 248. Here, the contemporaneous documentation demonstrates that the agency performed a relatively extensive analysis. Based on review of Prospect's proposal, it concluded that the total proposed cost was in line with its level of effort, which in turn was adequate for its technical approach. The agency recognized that Prospect's proposed level of effort was approximately twice as high as the IGCE level. It determined, however, that the amount of hours proposed was realistic because it was consistent with the proposed technical approach.<sup>3</sup>

The agency also considered the realism of the individual rates that the awardee proposed. Prospect submitted a certified payroll to demonstrate that the direct labor rates reflected current rates, which the agency found reasonable. Indirect rates were somewhat lower than those Prospect is currently using, but the offeror confirmed that the proposed rates were those submitted to its cognizant government auditing agency for approval. Because it is the experience of the cost evaluators that the auditing agency generally approves the rates submitted, the rates were considered realistic. The other proposed direct costs and fee were also evaluated and found realistic. The agency also reviewed the proposed subcontractor costs and found them realistic. Although Porter/Novelli questions the agency's failure to obtain detailed labor-rates and labor-hour

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<sup>3</sup>The agency did have concern about the number of labor hours that Prospect proposed for particular labor categories. That concern was raised during discussions and addressed in Prospect's BAFO.

figures for the proposed subcontractors, the agency did obtain information indicating the reasonableness of the subcontractors' rates and levels of effort from Prospect. In our view, the agency's analysis here was adequate to ensure that the proposed cost was realistic.

Porter/Novelli points to contradictions in the record regarding the IGCE as evidence of the unreasonableness of the agency's cost realism analysis. In particular, the protester points out that the shift from a solicitation including multiple options to one with only one period of performance apparently led to confusion within the agency about the level of effort needed for performance. Amendment 2 appeared to indicate that 7 staff-years were needed for the first year of performance, thus suggesting that considerably more might be needed to complete the 24-month tasks. On the basis of this language in amendment 2, Porter/Novelli argued during the protest that the IGCE's dollar value of approximately \$2 million should be doubled for the 24-month tasks, thus leading to a \$4 million figure--close to Porter/Novelli's proposal.

During a telephone conference conducted by our Office, the agency confirmed that the 7-staff-year, \$2 million estimate was intended to cover the entire contract; essentially, therefore, amendment 2 misstated the agency's intent. Any confusion in this matter was of no consequence, however, since both Prospect and Porter/Novelli proposed far more than the 7 staff-years that the agency had estimated were needed. Prospect was closer to the IGCE, proposing approximately 14 staff-years, while Porter/Novelli proposed considerably more than that. Effectively, the agency decided that the extant IGCE was of only limited value and did not rely on it in the cost realism analysis. We find the agency's approach unobjectionable, particularly in light of the IGCE's not being revised as the structure of the solicitation and the tasks to be performed changed between the calculation of the IGCE in April 1994 and issuance of the RFP in July. Instead of relying on the IGCE, the agency analyzed each offeror's proposed level of effort in terms of the proposed technical approach. Porter/Novelli has not demonstrated that the agency's methodology in this regard was unreasonable.

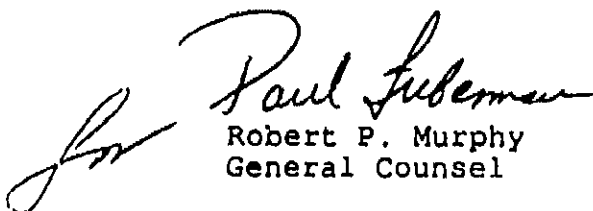
Moreover, while Porter/Novelli suggests that Prospect's \$2.2 million figure may be unrealistically low, it has not explained what aspect of Prospect's proposed cost is unrealistic. Despite access to the entire proposal under a protective order issued by our Office, the protester has not identified any specific component of Prospect's labor hours, labor rates, or other direct costs that it contends is unrealistically low.

In sum, Porter/Novelli has not demonstrated that the agency's cost realism analysis was unreasonable or arbitrary. Based on our Office's review of the record, we conclude that the agency reasonably determined that Prospect's proposed costs were realistic.

Finally, Porter/Novelli asserts that, if the agency had made clear during discussions that it considered Porter/Novelli's proposed cost extremely high, the protester could have reduced that cost by \$1.5 million and 5,100 hours at BAFO (beyond the \$1.5 million that it was already lowered from its initial offer) "without affecting the quality of its proposal."<sup>4</sup> While the protester concedes that the agency advised it during discussions that it could lose the competition due to its high cost and that it should "sharpen its pencils," it viewed this as "typical negotiation rhetoric" and argues that the agency had an obligation to be more explicit and to disclose that it viewed Porter/Novelli's proposed cost as "extremely high."

Agencies are not required to afford offerors all-encompassing discussions, and need only lead offerors into the areas of their proposal considered deficient. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. While Porter/Novelli contends that the agency used "typical negotiation rhetoric" in raising its concern about the protester's high proposed cost, this contention, even if it were well founded, would not establish that the discussions were inadequate; the fact remains that Porter/Novelli concedes that the agency explicitly raised the issue during discussions. See OK's Cascade Co. et al., B-257547 et al., Oct. 18, 1994, 94-2 CPD ¶ 154. It is telling in this regard that, in response to the discussions, the protester in fact reduced its proposed cost by more than a quarter. In these circumstances, Porter/Novelli cannot reasonably contend that it was not advised that its cost was viewed as high. We therefore conclude that the discussions were not misleading.

The protest is denied.

  
Robert P. Murphy  
General Counsel

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<sup>4</sup>That argument, which assumes that a proposed cost of approximately \$2.5 million for some 43,000 hours would have been realistic, undermines Porter/Novelli's suggestion that Prospect's \$2.2 million proposed cost for some 28,000 hours should have been viewed as unrealistically low on its face.